

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

DAVID K. MANN, individually;)	CV 10-128-M-DWM-JCL
ELIZABETH S. MANN; DELANEY)	
MANN; and M.H.M., MINOR CHILD,)	
BY AND THROUGH HER FATHER)	
AND NEXT FRIEND, DAVID K.)	
MANN,)	
)	
Plaintiffs,)	
)	
vs.)	ORDER
)	
REDMAN VAN & STORAGE CO.,)	
INC.; and ROWDY B. ANDERSON,)	
)	
Defendants.)	
)	

Defendants have filed several pretrial motions, including a motion for summary judgment and a motion to strike. United States Magistrate Judge Jeremiah Lynch entered Findings and Recommendation on October 17, 2011, and

recommended denying both Defendants' Motion for Summary Judgment on Plaintiffs' Direct Negligence Claims Against Redman Van and Storage Co., Inc. and Defendants' Motion to Strike Plaintiffs' Punitive Damage Claims. Defendants did not timely object to the Findings and Recommendation, and so have waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court will review the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a "definite and firm conviction that a mistake has been committed." United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000).

Judge Lynch concluded that Plaintiffs asserted a valid claim for punitive damages. Plaintiffs presented sufficient evidence upon which a reasonable trier of fact might conclude that Defendant Redman Van & Storage Co., Inc. was guilty of actual malice in hiring, training, and supervising Defendant Rowdy Anderson. Judge Lynch thus recommended that this Court deny Defendants' motion to strike the claim for punitive damages.

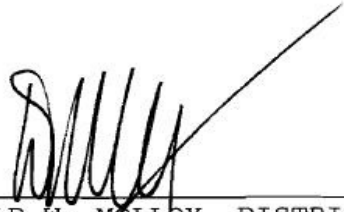
Defendants also moved for summary judgment on Plaintiffs' direct negligence claims against Redman on the ground that Redman has accepted vicarious liability for any negligence on Anderson's part. However, where a

plaintiff asserts a valid claim for punitive damages, negligence claims against an employer are not merely duplicative of vicarious liability claims. Accordingly, Judge Lynch recommended that this Court deny Defendants' summary judgment motion as well.

After reviewing Judge Lynch's Findings and Recommendation, I find no clear error. Therefore,

IT IS HEREBY ORDERED that Judge Lynch's Findings and Recommendation (dkt #41) are adopted in full. Defendants' Motion for Summary Judgment (dkt #25), and Defendants' Motion to Strike (dkt #28) are DENIED.

Dated this 15th day of November, 2011.



DONALD W. MOLLOY, DISTRICT JUDGE
UNITED STATES DISTRICT COURT

